

OFFICE OF THE GOVERNOR
STATE OF MONTANA

BRIAN SCHWEITZER
GOVERNOR



SENATE Free Conference
Exhibit No. 1
Date 4-27-2011 JOHN BOHLINGER
Lt. GOVERNOR SB 35
Bill No. _____

April 21, 2011

The Honorable Jim Peterson
President of the Senate
State Capitol
Helena, MT 59620

Dear President Peterson:

In accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby return with amendments Senate Bill No. 35 (SB 35), **"AN ACT GENERALLY REVISING AND CLARIFYING LAWS RELATED TO THE TREATMENT OF PROPERTY CONSISTING OF THE BEDS OF NAVIGABLE RIVERS; DEFINING A "NAVIGABLE RIVER"; REQUIRING AUTHORIZATION FROM THE BOARD OF LAND COMMISSIONERS FOR USES ON THE BEDS OF NAVIGABLE RIVERS; REQUIRING THE BOARD OF LAND COMMISSIONERS TO ADOPT RULES FOR PROVIDING LEASES, LICENSES, OR EASEMENTS FOR USES ON THE BEDS OF NAVIGABLE RIVERS; CLARIFYING THE AUTHORITY OF THE BOARD OF LAND COMMISSIONERS TO GRANT EASEMENTS; AND AMENDING SECTIONS 77-1-121, 77-1-134, AND 77-2-101, MCA."**

Senate Bill 35 provides express statutory and rulemaking authority to the State Board of Land Commissioners (Land Board) to issue leases, licenses, and easements for various uses of state-owned navigable riverbeds. The bill also establishes procedures that must be followed, both by users of the riverbeds and by the Department of Natural Resources and Conservation, to obtain the leases or easements.

The enactment of SB 35 was prompted by the Montana Supreme Court's recent ruling in *PPL Montana, LLC v. State of Montana*, 2010 MT 64 (2010), which held that navigable riverbeds are public trust lands pursuant to Article X, § 11(1) of the Montana Constitution, and that the State Land Board is required to administer these lands in accordance with its trust obligations imposed by Article X, § 11 of the Montana Constitution. *Id.* at ¶¶ 116, 117. Accordingly, all navigable riverbeds are to be held "in trust for the people" and shall not "ever be disposed of except in pursuance of general laws providing for such disposition, or until the full market value of the estate or interest disposed of, to be ascertained in such manner as may be provided by law, has been paid or safely secured to the state." Mont. Const. Art. X, § 11. *Id.*

My amendments eliminate from SB 35 the statement that prior payment of property taxes constitutes payment of "full market value" for the prior use of these public trust lands. Under the Montana Constitution, Art. X., § 4 only the Land Board can choose to dispose of an interest in trust property and determine whether full market value has been obtained for the grant of an interest in the property. *State v. Stewart*, 48 Mont.

SB 35

Hon. Jim Peterson

April 21, 2011

Page 2

347, 137 P. 854 (1913). The Legislature cannot compel the Land Board to exercise its discretion in any particular way or grant a property interest in state trust lands for a specific fixed price. *Id.*; see also *Montanans for Responsible Use of School Trust v. State ex rel. Bd. of Land Com'rs*, 199 MT 263 (1999). My amendments, therefore, are consistent with substantial case law and the well-established constitutional prerogatives of the Land Board and its fiduciary duty to obtain the full market value for these trust lands.

Additionally, my amendments clarify that SB 35 does not diminish the State's ownership of the beds of navigable waters under any other law nor does it restrict the power of the Land Board to adjudicate title to the beds of waters as authorized by existing statute. My amendments to SB 35 are intended to recognize the State Land Board's constitutional authority and its fiduciary duty to administer all of the State's navigable rivers in the best interests of the public trust beneficiaries.

My amendments also allow the holder of a lease, license, or easement issued pursuant to SB 35 to unilaterally move the footprint of a structure without further authorization from the Land Board and without any further payment and to increase the size of the footprint so long as fair market value is paid for the increase. This will allow irrigators and other leaseholders the flexibility necessary to move, maintain, and otherwise operate their structures as dictated by changing river conditions without having to wait for Land Board approval of routine activities, especially in time-sensitive water management situations.

I respectfully ask for your support of my amendments.

Sincerely,



BRIAN SCHWEITZER
GOVERNOR

cc: Legislative Services Division

Amendments to Senate Bill No. 35
Reference Copy

Requested by the Governor

For the Senate Committee of the Whole

Prepared by Todd Everts
April 21, 2011 (7:52pm)

1. Page 1, line 22.

Following: "met;"

Insert: "and"

2. Page 1, line 23 through line 28.

Strike: line 23 through line 28 in their entirety

3. Page 1, line 29.

Strike: "(e)"

Insert: "(c)"

4. Page 1, line 30 through page 2, line 1.

Strike: "; and" on page 1, line 30 through "time" on page 2, line
1

5. Page 2, line 2.

Strike: "the historic and future"

Insert: "process for the"

6. Page 2, line 4.

Following: line 3

Insert: "(3) Nothing in [sections 1 through 9] diminishes the
state's ownership of the beds of navigable waters under any
other law."

7. Page 2, line 5.

Strike: "For"

Insert: "Solely for"

8. Page 2, line 25.

Strike: "deemed"

Insert: "determined to be"

9. Page 3, line 4.

Strike: "deemed"

Insert: "determined to be"

10. Page 3, line 17.

Strike: "must"

Insert: "may"

11. Page 4, line 2.

Strike: "deemed"

Insert: "determined to be"

12. Page 4, line 8.

Following: line 7

Insert: "(11) The provisions of this section do not restrict the power of the board to seek adjudication of title pursuant to 77-1-105."

13. Page 4, line 16.

Strike: "deemed"

Insert: "determined to be"

14. Page 5, line 7.

Following: "relocate"

Insert: "or increase the size of"

15. Page 5, line 10.

Following: "relocated"

Insert: "or increased in size"

16. Page 5, line 11.

Strike: "The"

Insert: "Without prior board approval, the"

17. Page 5, line 12.

Following: "may"

Insert: "relocate or"

Following: "if the"

Insert: "relocation or"

18. Page 5, line 13.

Following: "granted"

Strike: "and if"

Insert: ". If the foot print is increased in size, "

Strike: "pays"

Insert: "must pay"

19. Page 5, line 14.

Strike: "has"

Insert: "must obtain"

20. Page 5, line 24 through line 25.

Strike: "for water" on line 24 through "water right" on line 25

21. Page 5, line 25.

Following: "relocate"

Insert: "or increase the size of"

- END -